IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. Nos. 833 & 835 of 2000

Judgment reserved on: 4.10.2007.

Date of decision: 11th October, 2007.

H.P. Tourism Development Corporation
(in both cases) ....Petitioner

-Versus-

1.Shri Tarkendar Sharma & Another (in CWP No.833 of 2000)
2.Madhu Sudan and another (in CWP No.835 of 2000)
….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta,Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Petitioners: Mr.Rajinder Dogra, Advocate.
(in both the cases)

For Respondents: Mr.Harish Bahl, counsel for R-1.
(in both cases)
Mr.M.S.Chandel, A.G. with Mr.R.M.Bisht,
Dy.A.G. for R-2. (in both cases)

Deepak Gupta, J.

By this judgment we are disposing of the aforesaid two writ petitions which involve common questions of law and arise out of a common order passed in O.A.(M) Nos.184 & 185 of 1995 by the learned H.P. State Administrative Tribunal on May 12, 2000.

Briefly stated the facts of the case are that the H.P. Tourism Development Corporation (HPTDC) invited applications through the Principal, Food Craft Institute, Kufri for filling up the posts of RCS (Trainees). The private respondents Tarkender Sharma and Madhu

Sudan applied for the said posts. They were selected by a duly appointed Selection Committee as trainee (RCS) at a fixed stipend of Rs.540/- per month. The office orders dated 6.5.1989 whereby the private respondents were appointed are identical in nature and relevant portion of the same reads as follows:

"OFFICE ORDER

Consequent upon the recommendations of the Selection Committee Shri Madhu Sudan is hereby appointed as Trainee (RCS) at a fixed stipend of Rs.540/- per month and is posted at Dalhousie Complex.

The period of training will be for two years which can be extended upto one year depending upon his/her work and conduct.

He will be liable for transfer to any place in and outside the Pradesh according to the exigencies of the Corporation work during the period of training.

Appointment in the regular pay scale will be considered upon satisfactory completion of the training period.

He will report for duty within 10 days and shall not be paid any TA/DA for the same.

Sd/-
MANAGING DIRECTOR,
TDC, SHIMLA

No.16-11/86-TDC-Admn.-2969 Dt.6.5.1989"

The private respondents were not confirmed on any post on completion of the training. They were not informed of any extension of the training. It is also not the case of the Corporation that the work and conduct of the petitioners were not satisfactory. The private respondents continued to work as trainees on a fixed stipend. On 31st March, 1993 Tarkender Sharma was transferred and in this transfer order for the first time he was shown to be a trainee (waiter). Tarkender Sharma complied with the transfer order but protested that he was trainee (RCS) and not trainee (Waiter) vide his letter dated 31st March, 1993. However, he received no reply to the said letter.

Both the private respondents also made representations to various functionaries of the Corporation and the State Government that they had been continued as trainees for an indefinitely long period and were note being confirmed.

Thereafter, the Corporation issued a letter on 24.1.1995 directing that the private respondents along with others who had been appointed as trainee waiters are proposed to be absorbed as Assistant Waiters subject to passing of trade test. They were directed to report to the Principal, Food Craft Institute, Kufri for the said purpose. Immediately thereafter private respondents filed O.As. before the learned Tribunal claiming that they had been appointed trainee RCS and the respondent Corporation be directed to appoint them as Captains on regular basis w.e.f. 6.5.1991 the date on which they had completed 2 years of training. They also prayed that the Corporation be directed to give them all consequential benefits.

These O.As. were contested by the Corporation. The case set up by the Corporation was that there was no post of trainee (RCS) in the Corporation and that the private respondents had in fact been appointed as trainee (waiter) and as per the Recruitment and Promotion Rules, they could be absorbed as Assistant Waiters subject to passing of the trade test and that since the private respondents did not appear in the trade test despite repeated opportunities they could not be even confirmed as Assistant Waiters.

The learned Tribunal came to the conclusion that the appointment letter of the private respondents nowhere laid down a

condition that they were to pass the trade test. Further it was of the view that there was nothing on record to suggest or to come to the conclusion that the trainee (RCS) would mean trainee (waiter). The learned Tribunal accepted the Original Applications filed by the respondents. The operative portion of the order reads as follows:

> "19.In view of the foregoing reasons both these applications are accepted and as a consequence thereof, both the applicants are deemed to have been appointed on the regular pay scale after completion of two years training period as per Annexure PA. The respondents are as such directed to release the regular pay scale to both the applicants from 6.5.1991 as was the pay scale meant for the post of R.C.S. In case no such post has been referred in the Recruitment and promotion Rules, framed afterwards the post of R.C.S. against which both the applicants are deemed to have been appointed on regular pay scale should be compared with the equivalent post for the grant of pay scale. In case the post of 'CAPTAIN' as provided in R&P Rules is compared with the post of R.C.S. the pay scale of 'CAPTAIN's' post be released in favour of applicants. In view of the aforesaid directions the consequential benefits as were available from time to time shall be given to the applicants including arrears of salary. With these directions both these petitions stand disposed of by this common judgment."
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> This order is under challenged before us.

We have heard Shri Rajinder Dogra, learned counsel for the Corporation and Shri Harish Bahl, learned counsel for the private respondents.

Sh.Rajinder Dogra contends that there is no post of trainee RCS and the only post of trainee is that of trainee (waiter) and therefore it has to be presumed that the private respondents were appointed as trainee (waiter) and as per the Recruitment and Promotion Rules they must pass the trade test before they can be appointed as Assistant Waiters.

Shri Harish Bahl, learned counsel for the private respondents submits that the private respondents would never have joined service if they had known that they were to be appointed as Assistant Waiters. He submits that assurances were given to them by the Corporation that on successful completion of training they would be appointed as Captains and uniform of captains was issued to them. It was urged that the private respondents have always been discharging functions of Captain and of higher level i.e. of supervisory and managerial nature and they cannot be confirmed as Assistant Waiters.

The relevant Rules as they existed in the year 1989 when the private respondents were appointed read as follows:

"FOOD & BEVERAGES

NOMENCLAURE OF POST	MODE OF FILLING UP THE POST	JOB SPECIFICATIONS
1.Trainee Waiter Ist year Minimum Wage. 2nd year minimum wage+50	100% by direct recruitment	Matric/Hr.Secondary (2 yrs. Training) Preference will be given to those who have passed Craft Course of at least one years duration in R&CS from a recognized Food Craft Institute. ….Age upto 21 years.
2,Asstt.Waiter Rs.300-430	100% by absorption of Trainee Waiter.	From trainee waiter subject o passing of trade test.
3.Waitor/Asstt.Barman Rs.325-495.	50% by promotion	From Assistant Waiter with one year's service as such on the basis of seniority.
	50% by direct recruitment.	Matric/Hr.Secondary and should have passed Craft Course in Restaurant & Counter Service of at least one year's duration from a recognized Institute with 2 years' experience in a hotel of repute. ……Age upto 27 years.
4.Captain/Barman Rs.400-600	50% by promotion	From Waiter /Asstt.Barman with 2 years service as such on the basis of merit-cum-seniority subject to passing of trade test.
	50% by direct recruitment.	Matric/Hr.Secondary and having passed Restaurant & Counter Service Course of atleast one year's duration from a recognized Institute with experience of 4 years of working in hotels of repute. …..Age upto 27 years."

Admittedly there is no post of trainee (RCS) in the Rules. The problem has been created by the Corporation itself which has appointed the private respondents as trainee (RCS) and not as trainee (waiters). We had called for the original record of the case and we find that even in the letter sent to the Principal, Food Craft Institute, Kufri on 5.4.1989 whereby he was asked to send the names of trained persons to be selected as trainees there is no mention that the said trainees were to be appointed as Trainee (Waiters) or against any specific post e.g. Assistant Waiter, Waiter, Captain etc. In fact this letter only indicates that trainees who have done Craft Course in RCS, Reception and Book Keeping and Cooking have to be appointed. Therefore, it is apparent that the Corporation had informed the Principal of the Food Craft Institute that only persons who have successfully done Craft Courses in the aforesaid fields would be selected as trainees.

As far as the Rules are concerned the minimum eligibility criteria for being appointed as trainee waiter is matric/higher secondary. It has however been laid down that preference would be given to those who had passed Craft Course of at least one year's duration in R&CS from a recognized Food Craft Institute. For the post of Assistant Waiters the mode of appointment was 100% by absorption of trainee waiters subject to their passing trade test. For the category of Waiter/Assistant Barman 50% posts were to be filled in by promotion and 50% by direct recruitment. In the case of direct recruitment the essential requirement was of having passed

matric/higher secondary and having passed Craft Course in Restaurant and Counter service with 2 years experience in a hotel of repute. In the case of Captain the mode of recruitment is similar to that of waiter and the essential job specification is also similar to that of waiter. The only difference is that 4 years experience of working in a hotel of repute is required.

Shri Harish Bahl has laid great stress on the fact that the private respondents were performing duties of Captain and referred to various letters on the record to show that the private respondents were in fact carrying on duties which were supervisory/managerial in nature and therefore he submits that his clients should be regularized as Captains. However, he has failed to point out any letter of appointment or any other material on record to show that the private respondents were ever appointed as Captains.

We are however clearly of the view that the final order of the learned Tribunal quoted above is absolutely vague and incapable of execution. The Tribunal has not given any clear-cut directions. When the post of RCS does not exist there was no question of releasing the pay scale meant for the post of RCS and similarly no equivalent post could have been found out against a post which was not in existence. The final order that in case the post of Captain is compared with the post of RCS the scale of Captain be released is also vague. The directions given by the learned Tribunal, with due respect, were incapable of being complied with.

In this Mess created by the Corporation by appointing the private respondents to a post which was not in-existence we have to find out what was the intention of the Corporation. As mentioned above the private respondents were never told that they were being appointed as trainee (waiters). They were not even paid minimum wages as provided for trainee waiters. They were kept on a fixed stipend. From the job specifications we find that the specifications sent by the Corporation to the Principal of the Food Craft Institute, Kufri were those of waiter. 50% posts of waiter can be filled up by direct recruitment from amongst persons who are matriculates and have completed craft course in R&CS and work for 2 years in a hotel of repute. It is this job specifications which come nearest to the specifications provided for by the Corporation and which both the private respondents fulfill. Both are matriculates. Both had done one year course in RCS from the Food Craft Institute, Kufri and they were both appointed on training for a period of 2 years. Obviously after completion of training they would have 2 years experience in a hotel of repute.

It is obvious that the intention of the Corporation at the time when these posts were initially advertised was that the trainees were to be later regularized on completion of training as Waiter/Assistant Barman. We are fortified in taking this view by the letter of appointment which clearly stipulates that on completion of 2 years training the services of the trainees would be regularized. The letter of appointment also provided for extension of training for a period of

one year. If the intention of the Corporation had been to appoint the private respondents as trainee waiters then as per the Rules it would have clearly laid down that on completion of training they would be absorbed as Assistant Waiters subject to passing of trade test. Absence of such stipulation clearly indicates that the private respondents were appointed as trainees at a level higher than that of Assistant Waiter i.e. Waiter/Assistant Barmen. We are not in agreement with the contention of Sh.Harish Bahl that they should be regularized as Captain/Barman because the essential qualification for being appointed as Captain is 4 years experience in a hotel of repute. Admittedly the Corporation had not laid down this criteria while inviting applications from the candidates who were called for interview. The Corporation had called candidates without any stipulation of experience. The training period was 2 years and at best this training period can be considered to be the period of experience to be reckoned for the purpose of job specifications.

In view of the above discussion, we are clearly of the view that on successful training the private respondents as per their letters of appointments were entitled to be regularized as Waiters/Assistant Barmen. It is not even the case of the Corporation that there was any shortcoming in the working of the private respondents. Therefore, we, partly allow the writ petition and set-aside the order of the learned Tribunal. We further direct that w.e.f. 6.5.1991 on successful completion of 2 years training as provided in the original appointment letters the private respondents, namely, Tarkender

Sharma and Madhu Sudan are entitled to be regularized as Waiters/Assistant Barmen. They shall also be entitled to all consequential benefits including arrears of salary, placement in the seniority list etc. The private respondents shall also be considered for further promotion by considering their service from 6.5.1991 as a regular Waiters/Assistant Barmen. The petitioner Corporation is directed to ensure that all benefits are given to the private respondents latest by 31st December, 2007.

Both the writ petition are disposed of in the aforesaid terms. No costs.

(Deepak Gupta),
Judge

October 11, 2007.
PV

(V.K. Ahuja),
Judge